IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Kishan Chand
Vs.
Ganganagar Central Cooperative Bank

S.B. CIVIL WRIT PETITION NO.813/1994 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 22nd December, 2006

PRESENT

REPORTABLE

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.M.S. Singhvi, Advocate for the petitioner.
Mr.Rajesh Joshi, Advocate for the respondents.

BY THE COURT

Under challenge in this writ petition are the order dated 02nd April, 1993 whereby the penalty of stoppage of three

grade increments with cumulative effect was imposed on the petitioner and the consequential order dated 10th November, 1993 passed by the Chairman of the respondent-Bank.

The facts in brief are that the petitioner was initially appointed on the post of Clerk with the Ganganagar Central Cooperative Bank Limited, Sri Ganganagar (in short the respondent-Bank). He was lastly promoted as Branch Manager in the year 1974. The petitioner was placed under suspension vide order dated 05th April, 1990. The respondent-Bank has adopted Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. A charge-sheet was issued to the petitioner on 02nd April, 1999 for initiating disciplinary proceedings against him. According to the petitioner, he submitted an application to the disciplinary authority on 08th May, 1990 demanding copies of certain documents. The disciplinary authority by communication dated 04th June, 1990 supplied copies of some of the documents to the petitioner. However, for certain other documents it directed that the same are to be issued to the petitioner by the concerned Branch. The

respondents however did not supply to him copy of the inquiry report. The Branch Manager also did not supply copies of the documents directed by the disciplinary authority. One Shri M.R. Bissu was appointed as inquiry officer in the case of the petitioner. The petitioner vide his application dated 09th April, 1991 raised the objection on the ground that Shri M.R. Bissu was member of the same cadre to which the petitioner belonged and the inquiry officer should be appointed at least from one higher rank. Moreover, Shri M.R. Bissu had conducted the preliminary inquiry and therefore he should not be asked to hold final inquiry. The Managing Director of the respondent Bank however by its letter dated 25th April, 1991 rejected prayer of the petitioner. The inquiry against him was completed without supplying remaining documents and notice dated 05th June, 1999 was issued to the petitioner by the Managing Director of respondent Bank with which copy of the inquiry report was also furnished to him. The petitioner submitted a representation to the inquiry officer on 04th July, 1992. He demanded personal hearing from the Chairman of the Bank. The disciplinary authority by his order dated 02nd April, 1993

imposed a penalty of three grade increments upon the petitioner. The petitioner submitted an appeal against the said order on 23rd April, 1993. He was however by communication dated 13th October, 1993 informed that the petitioner should file an appeal before the competent court, but it was not indicated as to who was competent to hear appeal. In compliance with the above order of penalty, the Chairman of the Bank by an order dated 10th October, 1993 directed stoppage of increments which became due to him on 09th February, 1991 and 09th February, 1993. It is with this back ground of the matter that the present writ petition has been filed with the prayer extracted above.

The writ petition has been contested by the respondent Bank who in their reply has asserted that all the necessary documents were supplied to the petitioner and for remaining documents, he was asked to inspect the same. It has been submitted that so far as the preliminary inquiry is concerned, the same was conducted by the administrative officer whereas Mr.M.R. Bissu has been appointed as the inquiry officer for final

inquiry. The preliminary inquiry was conducted by Shri G.S. Rajpurohit who was administrative officer and not by Mr.M.R. Bissu. It has been submitted that the petitioner has not indicated precisely by non-supply of which document prejudice was caused to him. The inquiry was conducted strictly in accordance with the Rules and there was no violation of the Rules in so far as the requirement of adherence to the procedure contained in CCA Rules is concerned. It is therefore prayed that the writ petition be dismissed.

I have heard Mr.M.S. Signhvi, learned counsel for the petitioner and Mr. Rajesh Joshi, learned counsel for the respondents and perused the record.

Mr.M.S. Singhvi has argued that the order of penalty dated 02nd April, 1993 suffers from the vice of non-application of mind inasmuch as the disciplinary authority has omitted to consider the reply of the petitioner and his specific objection that Mr.M.R. Bissu who conducted the preliminary inquiry could not be appointed as inquiry officer. Moreover, the disciplinary

authority has not applied his own mind independently to the charges and material on record and has rather singularly based his findings on the report of inquiry officer. It has been argued that finding of the disciplinary authority that bungling of Rs.1,30 lacs could only be made on account of negligence on the part of the petitioner was totally perverse. He has argued that the petitioner has been penalized for others' negligence. It was duty of the Dy. Manager, Shri M.R. Dhoodhi to verify the signatures on the cheques and it was due to his fault that cheques were wrongly debited to the account of Agriculture Marketing Board. On the charge proved in the inquiry report, it has been submitted that merely because the petitioner granted permission to open account in the name of M/s Jyoti Construction Company, he could not be held responsible for further acts of the other employees.

Mr.M.S. Singhvi, learned counsel for the petitioner further submitted that the inquiry has been initiated by an incompetent person. Reference in this connection has been made of Rule 15 of the CCA Rules, according to which it is only the disciplinary

authority who is competent to issue a charge-sheet. The charge-sheet in the present matter was issued by the Managing Director. Demanded documents were not supplied to the petitioner, most vital of which was the report of the preliminary inquiry. Those documents were essential for the petitioner to defend himself in the inquiry. The inquiry officer was biased against the petitioner inasmuch as he had already earlier conducted the preliminary inquiry against the petitioner. Mr.M.R. Bissu was the member of the same cadre of which the petitioner was member and therefore this has also prejudiced the case of the petitioner because inquiry officer should be a higher officer at least in one stage. Findings have been recorded on the basis of conjectures and surmises. Findings on issue No.1 and No.2 are totally perverse and erroneous and bereft of any material. It has been argued that when the order of penalty was passed by the Chairman of the Board by making it effective retrospectively in that increments which became due on 09th February, 1991, 09th February 1992 and 09th February, 1993 have been illegally withheld.

Mr.Singhvi has cited the cases of Ashok Kumar Yadav & Ors. Vs. State of Haryana & Ors., reported in AIR 1987 SC 454, Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shanker Pant & Ors., reported in 2001 (1) SCC 182, Badrinath Vs. Government of Tamil Nadu & Ors., reported in 2000 (8) SCC 395, Institute of Chartered Accountants of India Vs. L.K. Ratna & Ors., reported in 1986 (4) SCC 537 and Baidyanath Mahapatra Vs. State of Orissa & Ors., reported in AIR 1989 SC 2218.

On the question of non-supply of document Shri Singhvi has relied upon the judgments in State of U.P. Vs. Shatrughan Lal & Ors., reported in 1998 (6) SCC 651, Committee of Management, Kisan Degree College Vs. Shambhu Sharan Pandey & Ors., reported in 1995 (1) JT 270 and Trilok Nath Vs. Union of India reported in 1967 SLR 759.

He has argued that while the petitioner has been found guilty of ignorance in granting permission to open an account in the name of M/s Jyoti Construction Company, yet the material witness namely Shri Vijay Kumar who was introducer

of the aforesaid Company in opening the said account has not been examined. He in this connection relied on the judgment of Hardwari Lal Vs. State of U.P. & Ors., reported in JT 1999 (8) SC 418.

Lastly, Shri M.S. Singhvi argued that findings recorded by the inquiry officer to the effect that the petitioner admitted to his guilt that he did not tally the signature of Vijay Kumar is wholly unfunded. The evidence on record has thus been misread by the inquiry officer. It is therefore prayed that the impugned orders by quashed and set aside.

On the other hand, Shri Rajesh Joshi, learned counsel for the respondents argued that the inquiry officer on analysis of the evidence on record has rightly held the charges against the petitioner proved. Shri Rajesh Joshi referred to reply to the charge-sheet submitted by the petitioner on 21st June, 1990 (Annexure-5) particularly to that portion of reply in which he admitted that he believed that the details furnished for opening new account were correct and therefore he did not tally the

signatures of introducer Shir Vijay Kumar and granted permission for opening account. He also referred to the findings recorded by the inquiry officer wherein it has been concluded that the application forms for opening both the accounts were shown to the petitioner which apparently had the disparity of signatures made in the forms of opening the account when that was compared with the signatures on such forms of account No.863.

Shri Rajesh Joshi has relied upon the judgment of this Court and the Hon'ble Supreme Court in Channabasappa Basappa Happali vs. The State of Mysore reported in 1971 (1) SCC 1 and Khadi Gram Udhyog Pratisthan, Bikaner vs. State of Rajasthan & Ors. reported in 2000 (2) RLW 906 and argued that the order of penalty can be passed solely on the basis of admission without making any further inquiry. In the present case, however, he alternatively submits that full fledged inquiry has been conducted in which charges against the petitioner have been found proved. In regard to question of alleged bias on the part of inquiry officer Shri M.R. Bissu, Mr. Rajesh Joshi

argued that on mere askance of the petitioner it could not be accepted that Shri M.R. Bissue would be biased against the petitioner. The petitioner has not given any material or basis to substantiate his allegation of bias against the Inquiry Officer

Shri Rajesh Joshi has relied upon the judgment of the Hon'ble Supreme Court in Asstt. Superintendent Post Officer & Ors. Vs. G.Mohan Nair reported in AIR 1999 SC 2113, State Bank of Patiyala & Ors. vs. S.K. Sharma reported in 1996 (3) SCC 364, Canara Bank Vs. V.K. Awasthi reported in AIR 2005 SC 2090, Rajendra Singh Vs. State of M.P. reported in 1995 (5) SCC 460 and State of U.P. Vs. Harendra Arora & Anr. reported in 2001 (6) SCC 392 on the question of bias. He argued that the allegation of bias cannot be accepted unless some concrete material, datas or particulars are placed on record. The writ petition is therefore liable to be dismissed. On the question of violation of principles of natural justice Shri Rajesh Joshi relied on the judgment of Hon'ble Supreme Court in the case of Chairman Board of Mining Examination & Chief Inspector of Mines 7 Anr. vs. Ramjee reported in 1977 (2) SCC 256 wherein

their Lordships held that if fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual property being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Shir Joshi has relied upon the judgment of the Hon'ble Supreme Court in Managing Director ECIL Vs. B.Karunakar reported in 1993 (4) SCC 727 and U.P. Textile Corpn. Ltd. Vs. P.C. Chaturvedi & Ors. reported in 2005 (8) SCC 211 to further canvass his argument that there was in fact no violation of any of the facts of principles of natural justice.

He has argued that there was no infraction of any procedural rule of inquiry which has been conducted strictly in accordance with the CCA Rules. Even the petitioner has not alleged any such violation of the Rules. There was overwhelming evidence on record to sustain the finding of inquiry officer apart from the admission made by the petitioner. Sufficiency or inadequacy of the evidence cannot be subject matter of examination of this Court if it is shown that there was

some evidence to sustain the findings of guilt. It is therefore argued that the writ petition filed by the petitioner be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

Although much has been argued with regard to bias on the part of inquiry officer but the pleading in the petition do not reflect any material on which such allegation of bias could be sustained. Moreover no mala fides against the inquiry officer has been alleged nor has the inquiry officer been impleaded as party by name. The allegation of bias as rightly submitted by the learned counsel for the respondents on the authority of various cases relied upon by him cannot be accepted on mere ipse dixit of the petitioner. On facts also this allegation is not found substantiated because the respondents have denied that the preliminary inquiry was conducted by Shri M.R. Bissu. No datas, materials or particulars have been brought on record to

substantiate this argument. They have clarified that the preliminary inquiry was conducted by Shri G.S. Rajpurohit who was Administrative Officer and not by Shri M.R. Bissu. The arguments advanced by learned counsel for the petitioner on the question of bias therefore are liable to be rejected and hence rejected.

So far as the argument with regard to non-supply of the document is concerned, it is to be found from the pleadings that the assertion made by the petitioner are too vague to merit acceptance. The petitioner has not disclosed precisely owing to non-supply of which document any real prejudice was caused to him. Besides, mere non-supply of certain documents does not by itself prove prejudice to the petitioner. The delinquent has to prove the relevance of the document with the charge to actually show how and in what manner he was prejudiced. He has to show how and in what manner that document was used by the inquiry officer to prove the charge (s) against him even though the document was not supplied to him. Following the law enunciated by the Hon'ble Supreme

Court in B.Karunakar (supra) now when non supply of a final enquiry report does not always prove fatal to the validity of order of penalty, how possibly can non supply of preliminary enquiry report cause any prejudice to the petitioner, has not at all been demonstrated. Argument that charge-sheet was issued by an authority subordinate to disciplinary authority is liable to be rejected firstly because the respondents in reply to ground (d)(i) have clarified that Managing Director of the respondent Bank issued charge-sheet under direction of the Chairman of the Bank who is disciplinary authority, secondly this by itself did not violate nor did cause any prejudice because protection of Article 311(2) of the Constitution is available only in the case of dismissal, removal and reduction in rank and for no other purpose. On considering the inquiry report and the fact that the petitioner in his reply to the charge-sheet has himself admitted that he believed the details furnished for opening new account as true and therefore did not proceed to tally signature of the introducer Shri Vijay Kumar and therefore granted permission for opening new account. The argument of the petitioner that charges against him were taken to have been

proved by surmises and conjectures cannot be accepted. In fact the inquiry officer has concluded that the account opening application form of both the accounts on visual comparison reflected disparity between the two signatures. Such being the position, it cannot be said that findings of the inquiry officer was not based on relevant evidence and they are based on no evidence. Further argument of the petitioner is that principles of natural justice were violated also does not merit acceptance because the inquiry proceedings in the present matter were conducted as per Rule 16 of the CCA Rules and the petitioner has not pointedly argued as to which of the rule or sub rule in CCA Rules was violated.

It would be apposite to refer some of the observations on the principles of natural justice made in the case of S.K. Sharma (supra) wherein their Lordship of the Hon'ble Supreme Court extended the theory of prejudice propounded in the case of B. Karunakar (supra) even to non supply of documents. What was held was that a distinction has to be made between the cases where no notice, no opportunity and no hearing is

provided and those where what is complained is that adequate hearing was not provided. Their Lordship held that the issue has to be examined "from the standpoint of fair hearing – applying the test of prejudice, as it may be called – that any and every complaint of violation of the rule of audi alteram partem should be examined." Their Lordships held that "the approach and test adopted in B. Karunakar (supra) should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid." Having so held their Lordship proceeded to observe that "interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise."

It goes without saying that in the working of the banks, the faith reposed by their customers who maintains with the bank a relationship of trust and belief is of utmost significance. What has however happened in the present case is that by accepting the false introduction of M/s Jyoti Construction Company the opening of account in the name of such company facilitated the modus operandi adopted by the culprits who used stolen cheques drawn on the account of Rajasthan State Agricultural Marketing Board, Sriganganagar and got the money transferred first depositing the cheques with the newly account bank and getting the same then transferred to another bank and then withdrawing it.

It is trite law that this Court in exercise of its powers of judicial review can interfere in a disciplinary matter only when it finds that the findings recorded by the enquiry officer and/or disciplinary authority are based on no evidence and there are no materials to support the conclusions so arrived at or if the material on the basis with such conclusion has been reached was such that no reasonable or prudent man on that basis

could have arrived at such conclusion. The Hon'ble Supreme Court in Govt. of A.P. & Ors. vs. Mohd. Nasrullah Khan, (2006) 2 SCC p.373 while considering the very same question observed in para 11 as under :-

> "11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority."

Their Lordships of the Hon'ble Supreme Court in Indian Oil Corporation Ltd. & Anr. vs. Ashok Kumar Arora, (1997) 3 S.C.C. p.72 while considering the scope of interference by the High Court in cases relating to departmental enquiries observed in para 20 as under:-

> "20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally

> disproportionate to the proved misconduct of an employee. There is a catena of judgments of this Court which had settled the law on this topic and it is not necessary to refer to all these decisions. Suffice it to refer to a few decisions of this Court on this topic viz. State of A.P. vs. S.Sree Rama Rao, (1964) 3 SCR 25, State of A.P. vs. Chitra Venkata Rao, (1975) 2 SCC 557, Corpn. Of the City of Nagpur v. Ramchandra, (1981) 2 SCC 714 and Nelson Motis v. Union of India, (1992) 4 SCC 711."

The very same view was reiterated by their Lordships in Principal Secretary, Govt. of A.P. & Anr. vs. M.Adinarayana, (2004) 12 SCC p.579 in para 24 and 25 as under:-

> "24. The order of the Administrative Tribunal interfering with the well-considered order of TDP is unwarranted. APAT cannot sit as a court of appeal over a decision based on the finding of the enquiry authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supported the conclusion reached by the disciplinary authority, it is not the function of APAT to review the same and reach a different conclusion. So, it is well settled that if the findings recorded by the tribunals or of the disciplinary authorities, are found to be perverse, which are not based on the legal evidence, then the Administrative Tribunal or the court is empowered to treat such flaw as a legal flaw and quash the impugned action. In the instant case, the fact-finding authority has based its findings on legally permissible substantive evidence. And, therefore, such a finding on fact based on substantive evidence is not permissible to be interfered with.

> 25.In our opinion, the Administrative Tribunal cannot ignore the findings of the disciplinary authority or the tribunals. The truth or otherwise of the charge is a matter for the disciplinary authority to go into. The finding of the court or tribunal under judicial review which, in our opinion, cannot extend to the re-examination of all evidence to decide the correctness of the charge. In our view, the Administrative Tribunal cannot sit as a court of appeal over a decision based on finding of the enquiry authority in disciplinary proceedings. This Court, time and again, categorically stated that Court should not interfere with the quantum of punishment where there is some relevant material which the disciplinary authority has accepted and which material has reasonable support, the conclusion reached by the Disciplinary Tribunal, it is not the function of the Administrative Tribunal to review the same and reach a different finding than that of the disciplinary authority."

In our considered view, this Court cannot in exercise of its power of judicial review under Article 226 of the Constitution of India interfere with the order of disciplinary authority, when on the facts of the present case, it is found that there was ample evidence on which finding recorded by the Inquiry Officer and upheld by the disciplinary authority can be based. This Court in exercise of its power of judicial review under Article 226 of the Constitution cannot re-evaluate such evidence and supporting material to test correctness of the

findings so recorded as if it were a remedy of appeal. The charges against the appellant were proved by substantive evidence and the evidence on record reasonably support the conclusion reached by the disciplinary authority. The impugned order of removal therefore does not suffer from any illegality.

In view of what has been discussed above, the writ petition is dismissed with no order as to costs.

[MOHAMMAD RAFIQ],J.

AKC